IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-12-2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

W.P.NO.15433 OF 1997
&
W.M.P. NO.25361 OF 2004

The Tuticorin Thermal Station
-Industrial Cooperative Society Limited.,
Ind.No.1742,
Tuticorin-628 004. .. Petitioner`

Vs.

1. The Deputy Regional Director,
   Sub Regional Office,
   E.S.I. Corporation,
   1-B, Old Post Office Street,
   Thallakulam, Madurai-1.

2. The Joint Regional Director,
   E.S.I. Corporation,
   1-B, Old Post Office Street,
   Thallakulam, Madurai-1.

3. The Regional Director,
   E.S.I. Corporation,
   Chennai-600 034.

4. Insurance Inspector Revenue Recovery,
   Sub-Regional Office,
   1-B, Old Post Office Street,
   Thallakulam, Madurai-1.

.. Respondents

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Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus as stated therein.

For petitioner : Mr.R.Balasubramanian for
M/s M.Mohan

For respondents : Mr.G.Desappan

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ORDER

The Writ Petition is filed to issue a Writ of Mandamus or direction forbearing the respondents and their subordinates from making a demand or collecting any amount as contribution under Section 45 (B) of the Employees State Insurance Act from the Tuticorin Thermal Power Station Service Industrial Co-operative Society.

2. In the affidavit filed in support of the petition, the Managing Director of the Petitioner Society has submitted that the employees of the Power Station including permanent employees and employees engaged by private contractors are members of the petitioner society; that there are about 3500 manual workers employed in the power station; that the petitioner society has been established in the year 1987 for the uplift and welfare of the unskilled labourers in the locality, consisting of two staff members i.e., (i) Managing Director and (ii) Accounts Assistant; that the Managing Director is drawn from the Department of the Industries and Commerce and the Accounts Assistant is drawn from Tamil Nadu Electricity Board; and their salaries are met with by the Tamil Nadu Electricity Board; that the rent for office maintenance and office contingencies are met with by the Tamil Nadu Electricity Board; that the members of the Society are employed in the Thermal Power Station on daily wage basis and their wages are paid through the Society; that a portion of their wages is deducted by the society for the welfare schemes of the member workers; that the petitioner-society works only as a benevolent agent and the Electricity Board has sanctioned a strength of 450 member workers to the petitioner society and the Employees State Insurance Act, 1948 has no application to the petitioner society; that in G.O.Ms.No.798, Labour dated 20.4.1988, the Government have exempted the Tuticorin Thermal Power Station from the operation of the Employees State Insurance Act, 1948 with effect from 9.7.1979 and therefore, the demand of contribution under the said Act is void ab-initio and is liable to be interfered with; that the respondents have now asked the Thermal Power Station to pay the amount due from the Thermal Power Station to the petitioner society towards the arrears of contribution alleged to be due from the petitioner society and they have also issued a prohibitory order to Canara Bank (TTPS Extension Counter) prohibiting the Bank from making any payment to the petitioner society. Hence the Writ Petition.

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3. In the counter affidavit filed by the respondents, they have submitted that the petitioner society applied for coverage with effects from 1.5.1987 vide its letter dated 30.4.1987 and the Insurance Inspector conducted a survey on 8.5.1987 and recommended coverage with effects from 1.5.1987 provisionally; that the petitioner society further required in its letter dated 13.7.1987 for allotment of code number which had been done by the

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Regional Office on 22.7.1987; that since there was no compliance pursuant to the code number, contribution was calculated on ad hoc basis for the period from 1.5.1987 to 30.5.1988 and demand notice was issued on 1.8.1989; that thereafter the petitioner society represented that they were trying for exemption from coverage from the Government of Tamil Nadu, as was done in the case of employees under the principal employer i.e. Tuticorin Thermal Power Station, vide G.O.Ms.No.798 dated 20.4.1988; that the Insurance Inspector, Tuticorin inspected the petitioner society on 22.11.1995 and 23.11.1995 and verified the attendance register for the period from 5/87 to 6.11.1995 and the wages register from 10/87 to 10/95 and the society was directed to produce the wage register from 5/87 to 9/87; that the Insurance Inspector calculated the actual wages paid to the workers based upon the entries in the attendance register and the wages register and made a claim of a sum of Rs.1,55,296/-for the period from 5/87 to 4/88 and a sum of Rs.16,92,385/- for the period from 5/88 to 10/95. Based upon the said report, the Deputy Director, S.R.O., Madurai-2 made a demand in Form No.C-18(actual basis) under two separate proceedings dated 26.4.1996/3.5.1996 and 25.4.1996/3.5.1996 respectively; that since the petitioner society failed to pay the said amount, the Recovery Officer, Madurai-2 was directed to initiate recovery proceedings; that a similar claim was made for a sum of Rs.8,26.457/- for the period from 11/95 to 3/97; that the petitioner society is liable to pay a sum of Rs.26,79,546/- together with further interest; that despite the notice from the Recovery Officer, the petitioner society did not pay the contribution amount and therefore the impugned prohibitory order dated 26.9.1997 was issued; that they further submitted that the exemption granted to the Tuticorin Thermal Power Station specifically excluded the contract labour employed by them; that the employees supplied by the petitioner-society to the Tuticorin Thermal Power Station are in contract of service; that the petitioner-society has not been granted the exemption; that the wages in respect of the workers supplied by the society are paid by the Thermal Power Station only to the Society and not to the workers directly; that the Society deducted a portion of the amount from the wages paid to the workers, but the amount so deducted is spent for the welfare schemes entirely; that the petitioner-society has rendered contract of service to the Thermal Power Station and therefore the said workers are liable to be covered; that the Thermal Power Station does not pay any contribution to the E.S.I. Corporation in respect of these employees; that when the petitioner-society received the wages from the Thermal Power station and disbursed them to its member-workers after deducting a portion itself, it is not open to the petitioner to say that E.S.I. Act has no application to the petitioner society; that the workers allotted by the Electricity Board are paid wages only by the petitioner-society which sought coverage under the E.S.I. Act and Code number was allotted; that the petitioner society cannot escape from the liability under the ESI Act; that the G.O., granting exemption in

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the case of Tuticorin Thermal Power Station, specifically excluded the contract labour; that the members of the petitioner society cannot be deemed to be the workers of the Thermal Power Station and they cannot claim the benefit of exemption; that they got effective remedy under Section 75 of the E.S.I. Act; that the estimated payment of wages to the member workers for a whole year is only Rs.11,17,13,186/-; that therefore they issued the prohibitory order to Canara Bank from making any payment to the petitioner-society and hence the dismissal of the Writ Petition is prayed for.

4. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both what comes to be apprised of is that the petitioner-society has filed the above writ petition for a direction forbearing the respondents from making demand or collecting any amount as contribution under Section 45 (B) of the Employees State Insurance Act, 1948, from the petitioner-society and their contention is that the employees of the Thermal Power Station including permanent employees and employees engaged by private contractor are the members of the petitioner-society numbering about 3500; that the members of the society are paid through the petitioner-society and a portion of their wages is deducted by the petitioner-society for the welfare oriented scheme of the members/workers.

5. In the above circumstances, the contention of the petitioner-society is that the Employees State Insurance Act, 1948 has no application to the petitioner-society, since in G.O.Ms.No.798 Labour Department, Government of Tamil Nadu dated 20.4.1988, the Government have exempted the Tuticorin Thermal Power Station from the operation of the Employees State Insurance Corporation Act, 1948 with effects from 9.7.1979 and therefore the demand of contribution under the said Act, is void ab initio and is liable to be interfered with and since the respondents have now asked the arrears of contribution due from the petitioner-society and have issued a prohibitory order also to the Canara Bank (TTPS Extension Counter) prohibiting the said Bank from making any payment to the petitioner-society they have come forward to seek the relief extracted supra. The learned counsel for the petitioner relies on a Division Bench decision of this Court reported in REGIONAL DIRECTOR, EMPLOYEES' STATE INSURANCE CORPORATION Vs. P.MANICKAM, PROPRIETOR, THIRUMURUGAN ENGINEERING WORKS (2004(2) L.L.N. 1098)wherein it is held "In the present case, there is no dispute that the persons who were employed in connection with the work of the factory. There is no dispute that they have been carrying out the work within the premises of the factory. In such circumstances there is no escape from the conclusion that such employees under the contractor are also to be considered as employees of the present respondent, as such persons who have been employed within the premises of the factory are belonging to the present respondent."

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6. On the other hand on the part of the learned counsel for the respondents it would be argued that the exemption granted to the Tuticorin Thermal Power Station specifically excluded the Contract Labour employed by them and that the employees supplied by the petitioner-society to the said Power Station are in contract of services and since the petitioner-society has not been granted with any exemption and further since the wages payable to the workers supplied by the petitioner-society are paid not by the Thermal Power Station directly but through the petitioner-society, which deducts a portion of the amount from the wages paid to the workers which have been spent for purposes other than for making contribution under Employees State Insurance Corporation Act, 1948. It would further be argued that the petitioner-society is rendering only contract of services to the Thermal Power Station and therefore the said workers are liable to be covered under the Act, that when the petitioner-society receives the wages from the Thermal Power Station and disbursed to them to each member worker after deduction a portion of their wages for the welfare oriented measures it is not open for the petitioner-society to say that the Employees State Insurance Corporation Act, 1948 has no application to the petitioner-society. The learned counsel for the respondents relied on a Division Bench decision of this Court reported in PONDICHERRY STATE WEAVERS' CO-OP. SOCIETY Vs. REGIONAL DIRECTOR, EMPLOYEES' STATE INSURANCE CORPORATION, MADRAS (1983 I L.L.J. 17), wherein it is held:

> "The fact that an employee happens to be a shareholder of a Cooperative Society does not make him nonetheless an employee. In this case that there was an employment of persons who were share holders of the Co-operative Society is clear from the registers of the Society wherein the amounts paid to the employees as wages have been debited against the company and the employees' names also find a place in the attendance register, therefore, can it be said that merely because the employees were members holding shares in the Cooperative Society, they cease to be its employees? Thus it cannot be said that they are not entitled to be covered by the Employees State Insurance Act. In this view of the matter, we have to uphold the decision of the Employees' State Insurance Court and dismiss the appeal." (Emphasis supplied)

On such arguments the learned counsel appearing on behalf of the respondents would seek to dismiss the above writ petition as devoid of merits.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the arguments of the

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learned counsel for both what comes to be known is that though exemption has been granted by the Government in G.O.Ms.No.798 Labour Department dated 20.4.1988, the exemption has been granted only in favour of the Tuticorin Thermal Power Station and not the petitioner-society and moreover, the petitioner-society has supplied its employees to the said Thermal Power Station and also in contract of service, since no exemption has been granted in favour of such employees for such contract services and since admittedly are collected contribution and deducted from the wages of such workers from their salaries but without making payment of contribution to the respondents' Corporation they have come forward to make use of the relevant provisions of law particularly Section 45 (B) of the Employees State Insurance Act, 1948.

8. This Court is not able to see that in the Scheme of things and the operational sphere of the contract workers engaged by the petitioner-society and supplied to the Thermal Power Station and deducting the contributions from the salaries of the employees but without effecting payment under the provisions of the Employees State Insurance Act, 1948, besides not being covered under the G.O.Ms.No.798 Labour Department dated 20.4.1988 the petitioner-society only becomes liable to be assessed under the relevant provisions of the Employees State Insurance Corporation Act, 1948 particularly under Section 45 of the Act, as it has been done by the respondents and since such of the acts done on the part of the respondents are welfare oriented measures of the employees, the petitioner in spite of deducting the contributions from the employees' wages in the name of the welfare oriented measures, not coming forward to pay the Employees State Insurance contribution is an injustice done to the members of the petitioner-society.

9. For all the above discussions held, this Court does not deem it necessary to cause its interference in any manner, into the well considered and merited orders passed by the respondents under Section 45 (B) Employees State Insurance Act, 1948 and hence the following decision.

In result,

(i) The above writ petition does not merit acceptance and it becomes liable to be dismissed and is dismissed accordingly;

(ii) The impugned orders passed by the respondents from making a demand or collecting any amount under Section 45(B) of the Employees State Insurance Act,1948 from the Tuticorin Thermal Power Station Service Industrial Co-operative Society are hereby confirmed; and

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(iii) Consequently, the connected W.P.M.No.25361 of 2004 is also dismissed;
However, there shall be no order as to costs

Sd/
Asst.Registrar

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Sub Asst.Registrar

Copy to

1. The Deputy Regional Director,
   Sub Regional Office,
   E.S.I. Corporation,
   1-B, Old Post Office Street,
   Thallakulam, Madurai-1.

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One cc to Mr.G.Desappan , Advocate SR.56150.

One cc to Mr.R.Balasubramanian, Advocate SR.No. 55786.

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